

REMARKS

Claims 10-18, 28-36 and 42-44 are pending in the present application. By this Response, claims 10-15, 17, 28-33, 35 and 42-44 are amended. Claims 10, 28 and 42-44 are amended to recite "retaining the broadcast event according to the retention parameter in order to create a previously recorded broadcast event, retrieving the previously recorded broadcast event according to the playback format parameter, and playing back the previously recorded broadcast event according to the playback format parameter." Support for these amendments may be found at least on page 46, line 18 to page 47, line 9 of the current specification. Claims 11-15, 17, 29-33 and 35 are amended to correct for antecedent basis. Reconsideration of the claims in view of the above amendments and following remarks is respectfully requested.

I. Examiner Interview

Applicant thanks Examiner Vuong for the courtesies extended Applicant's representatives during the September 27, 2004 telephone interview. During the interview, Examiner Vuong indicated that the above amendments may overcome the Hoffman and Culbertson references. Therefore, it is the Applicant's understanding that, pending an update search by Examiner Vuong, the present claims are now in condition for allowance. The substance of the interview is summarized in the remarks of Section III, which follows.

II. 35 U.S.C. § 112, Second Paragraph

The Final Office Action rejects claims 17 and 35 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 17 and 35 are amended to correct for antecedent basis. Therefore, the rejection of claims 17 and 35 under 35 U.S.C. § 112, second paragraph is overcome.

III. 35 U.S.C. § 103, Alleged Obviousness, Claims 10-17, 28-35 and 42

The Office Action rejects claims 10-17, 28-35 and 42 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hoffman et al. (U.S. Patent No. 4,635,121) in view of Culbertson et al. (U.S. Patent No. 5,168,481). This rejection is respectfully traversed.

As to claims 10, 28 and 42, the Office Action states:

Regarding claims 10, 28, and 42, Hoffman et al. disclose a method, a system, and a computer program product implemented in a data processing system for storing broadcast events for playback at a later time, wherein the data processing system includes a broadcast receiver, the method comprising: receiving a retention parameter for retaining a broadcast event; and retaining a broadcast event according to the retention parameter (column 5, lines 27-42; and column 7, lines 32-60). Hoffman et al. do not specifically disclose receiving a playback scheduling parameter for scheduling a broadcast event; receiving a playback format parameter for playing back a broadcast event; retrieving a broadcast event according to the playback format parameter; and playing back a broadcast event according to the playback format parameter. However, Culbertson et al. disclose receiving a playback scheduling parameter for scheduling a broadcast event; receiving a playback format parameter for playing back a broadcast event; retrieving a broadcast event according to the playback format parameter; and playing back a broadcast event according to the playback format parameter (column 1, lines 25-35, 43-66). Therefore, it would have been obvious for one having ordinary skill in the art at the time the invention was made to adapt the above teaching of Culbertson et al. to Hoffman et al., in order to automatically playback stored broadcast based on the schedule (as suggested by Culbertson et al. at column 1, lines 55-60).

Office Action dated July 9, 2004, pages 3-4.

Claim 10, which is representative of the other rejected independent claims 28 and 42 with regard to similarly recited subject matter, reads as follows:

10. A method implemented in a data processing system for storing broadcast events for playback at a later time, wherein the data processing system includes a broadcast receiver, the method comprising:
 - receiving a retention parameter for retaining a broadcast event;
 - receiving a playback scheduling parameter for scheduling the broadcast event;
 - receiving a playback format parameter for playing back the broadcast event;
 - retaining the broadcast event according to the retention parameter in order to create a previously recorded broadcast event;

retrieving the previously recorded broadcast event according to the playback format parameter; and

playing back the previously recorded broadcast event according to the playback format parameter.

Hoffman and Culbertson, taken alone or in combination, fail to teach or suggest retaining the broadcast event according to the retention parameter in order to create a previously recorded broadcast event, retrieving the previously recorded broadcast event according to the playback format parameter, and playing back the previously recorded broadcast event according to the playback format parameter.

Hoffman is directed to a system for programming a radio and/or television receiver for future transmissions where problems may occur due to overlapping of the programmed transmissions. To address possible overlapping, Hoffman provides priority data for the individually programmed transmissions, which controls the sequence in the event of overlapping transmissions. The use of the priority data is particularly efficient when the transmissions are controlled in addition or exclusively by transmitted identification numbers and consequently are only received during the actual transmission time, as then shifts with respect to the planned transmission times cannot be foreseen.

Thus, with the system of Hoffman, a user programs a radio to receive future transmissions based on the time the transmission is to be received and at that time, the system of Hoffman tunes the radio to that frequency. In contradistinction, the presently claimed invention retains a broadcast event according to a retention parameter in order to create a previously recorded broadcast event. Hoffman does not teach or suggest this feature. The Office Action alleges that this feature is taught by Hoffman at column 5, lines 27-42 and column 7, lines 32-60, which read as follows:

Also after a programmed transmission has been found, repeated reading of the memory 7 is continued and when now a different, programmed transmission is found, whose data, as regards the time, correspond to the data supplied by the electronic clock 10, the priority number of this other transmission is compared with the intermediately stored priority number. If the priority number of the other transmission exceeds the intermediately stored priority number, the higher priority number is stored intermediately and the associated frequency data are applied to the tuning unit 5 so that now the transmission having the higher priority number is reproduced. In this way an unambiguous decision is

taken also when, accidentally, two transmissions which start at the same time or have at least partly the same time of transmission are programmed.

(Column 5, lines 27-42)

Still further applications of the described arrangement are obtained, when, in addition to the identification numbers of the transmissions, also data in the program survey or data transmitted with the actual transmission which indicate the type of transmission, these types of transmissions being, for example, the news, sporting events, political broadcasts, musical programs etc., are transmitted. When it is assumed that the data indicating the type of program are additional data, it is possible to store as program data a program type together with a time or a time range instead of the time or the identification number, respectively, of a given transmission. Also here the additional storage of priority data and blocking data is possible in an identical way. The data indicating the type of the transmission received are also applied to the comparator 8 from the digital evaluation circuit 2 via the conductor 28. As a result thereof, all transmissions within the programmed time range determined by comparing the data from the electronic clock 10 in the comparator 8 are indicated, the type in accordance with the data applied to the comparator 8 via the conductor 28 corresponding to the programmed data, is displayed on the reproducing device 3 or recorded by means of the recording device 12. When in addition certain transmissions are programmed which fall within this time range, they can be treated with precedence or in dependence on the priority programmed therewith.

(Column 7, lines 32-60)

In column 5, lines 27-42, Hoffman is merely describing that after the system has located the previously programmed transmission, the memory is repeatedly read for when a different, programmed transmission is found. In column 7, lines 32-60, Hoffman is merely describing additional data that is transmitted along with the actual transmission, which indicates the type of transmission, is stored as program data together with a time or a time range instead of the time or the identification number. Nowhere in these sections, or any other section of Hoffman, is it taught or suggested to retain a broadcast event according to a retention parameter in order to create a previously recorded broadcast event. Hoffman teaches a memory that is used to store selections of transmissions and transmission times. This is shown by Hoffman at column 4, lines 1-9, which reads as follows:

The output of the selection control arrangement 6 is connected to a memory 7 for a plurality of program data which can wholly or partly be

entered by the user via the control unit 4. In addition, a character reader may be connected to the control unit 4, by means of which reader the user can, for example, read character codes from the Radio Times and enter them as programming data into the memory 7 via the selection control arrangement 6.

As shown by this section, Hoffman clearly only stores the user's selection of transmissions and the times for those transmissions. Hoffman does not teach or suggest retaining a broadcast event according to a retention parameter in order to create a previously recorded broadcast event.

Culbertson does not make up for the deficiencies of Hoffman. Culbertson is directed to an automated digital broadcast system which is capable of reliable operation for long periods of time without human assistance. The system comprises a plurality of compact disc players or other audio devices which are controlled by a computer to sequentially play a predetermined list of musical selections and commercial or informational messages. Thus, the Culbertson reference merely teaches broadcasting a predetermined list of musical selections and commercial or informational messages. There is nothing in any section of Culbertson that teaches or suggests retaining a broadcast event according to a retention parameter in order to create a previously recorded broadcast event.

Additionally, Culbertson does not teach or suggest retrieving the previously recorded broadcast event according to the playback format parameter. The Office Action alleges that this feature is taught by Culbertson at column 1, lines 25-35 and 43-66, which read as follows:

There are a number of applications where it would be desirable to have an automated broadcast system capable of playing music and other prerecorded materials over extended periods of time without human assistance. Such a system must perform the same tasks that were described above; it must start and stop the various selections in a timely manner to maintain a predetermined schedule, and it must operate reliably, monitoring the operation of the audio playback devices and taking appropriate action if a device fails to cue or play a given selection.

(Column 1, lines 25-35)

The present invention overcomes the shortcomings of the prior art by providing an automated digital broadcast system which is capable of reliable operation for long periods of time without human assistance. The

system comprises a plurality of compact disc players or other audio devices which are controlled by computer to sequentially play a predetermined list of musical selections and commercial or informational messages.

The system executes control software to perform the following functions. It reads from a data storage device into memory a compiled playlist of selections for a given period of time, such as 24 hours. It sends control signals, using appropriate interface hardware, to the audio playback devices to start and stop play of selections according to the playlist schedule. The selections are cued prior to play so that their starting time can be accurately controlled. It receives signals from the audio playback devices and monitors their operation. In the event of failure to cue, start or stop a selection on schedule, the control software causes corrective action to occur. For example, if a compact disc player does not acknowledge receipt of a command to start play, the commands to start play are reissued.

(Column 1, lines 43-66)

In column 1, lines 25-35, Culbertson merely teaches an automated broadcast system capable of playing music and other prerecorded materials over extended periods of time without human assistance. In column 1, lines 43-66, Culbertson merely teaches an automated digital broadcast system comprised of compact disc players or other audio devices which are controlled by a computer to sequentially play a predetermined list of musical selections and commercial or informational messages. Nowhere in these sections, or any other section of Culbertson, is it taught or suggested to retrieve a previously recorded broadcast event, which was retained according to a retention parameter, according to the playback format parameter.

Furthermore, Culbertson does not teach or suggest playing back the previously recorded broadcast event according to the playback format parameter. The Office Action alleges that this feature is taught by Culbertson at column 1, lines 25-35 and 43-66, shown above. As discussed above, these sections of Culbertson merely teach an automated broadcast system capable of playing music and other prerecorded materials over extended periods of time without human assistance. Nowhere in any section of Culbertson is it taught or suggested to play back a previously recorded broadcast event, which was retained according to a retention parameter, according to the playback format parameter.

Furthermore, there is not so much as a suggestion in either reference to modify the references to include such features. That is, there is no teaching or suggestion in Hoffman or Culbertson that a problem exists for which retaining the broadcast event according to the retention parameter in order to create a previously recorded broadcast event, retrieving the previously recorded broadcast event according to the playback format parameter, and playing back the previously recorded broadcast event according to the playback format parameter, is a solution. To the contrary, Hoffman only teaches a system where a user programs a radio to receive future transmissions based on the time the transmission is to be received and at that time. Culbertson only teaches broadcasting a predetermined list of musical selections and commercial or informational messages. Neither reference even recognizes a need to retain a broadcast event according to a retention parameter in order to create a previously recorded broadcast event, retrieve the previously recorded broadcast event according to the playback format parameter, and play back the previously recorded broadcast event according to the playback format parameter, as recited in claim 10.

Moreover, neither reference teaches or suggests the desirability of incorporating the subject matter of the other reference. That is, there is no motivation offered in either reference for the alleged combination. The Office Action alleges that the motivation for the combination is "in order to automatically playback stored broadcast based on the schedule (as suggested by Culbertson et al., column 1, lines 55-60)." This section of Culbertson is shown above and, as discussed above, Culbertson merely teaches broadcasting musical selections and commercial or informational messages through compact disc players or other audio devices. Neither reference retains a broadcast event according to a retention parameter in order to create a previously recorded broadcast event. Thus, the only teaching or suggestion to even attempt the alleged combination is based on a prior knowledge of Applicant's claimed invention thereby constituting impermissible hindsight reconstruction using Applicant's own disclosure as a guide.

One of ordinary skill in the art, being presented only with Hoffman and Culbertson, and without having a prior knowledge of Applicant's claimed invention, would not have found it obvious to combine and modify Hoffman and Culbertson to arrive at Applicant's claimed invention. To the contrary, even if one were somehow

motivated to combine Hoffman and Culbertson, and it were somehow possible to combine the two systems, the result would not be the invention, as recited in claim 10. The result would be simply tuning a radio to a predefined selection and playing musical selections and commercial or informational messages through compact disc players or other audio devices. The resulting system still would not retain a broadcast event according to a retention parameter in order to create a previously recorded broadcast event, retrieve the previously recorded broadcast event according to the playback format parameter, and play back the previously recorded broadcast event according to the playback format parameter.

Thus, Hoffman and Culbertson, taken alone or in combination, fail to teach or suggest all of the features in independent claims 10, 28 and 42. At least by virtue of their dependency on claims 10, 28 and 42, the specific features of claims 11-17 and 29-35 are not taught or suggested by Hoffman and Culbertson, either alone or in combination. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 10-17, 28-35 and 42 under 35 U.S.C. § 103(a).

Moreover, in addition to their dependency from independent claims 10 and 28 respectively, the specific features recited in dependent claims 11-17 and 29-35 are not taught or suggested by Hoffman and Culbertson, taken alone or in combination. For example, with regard to claims 13 and 31, neither Hoffman nor Culbertson, taken alone or in combination, fairly teaches or suggests where the playback scheduling parameter associated with scheduling the broadcast event and prioritized by topic with respect to other broadcast events. The Office Action admits that Hoffman does not specifically disclose receiving a playback scheduling parameter for scheduling a broadcast event, but then alleges that Hoffman teaches the claimed feature at column 1, lines 50-61, columns 4-5 and column 7, lines 32-60. Applicant agrees with the admission of the Office Action that Hoffman does not teach this feature and that nowhere in the rather lengthy portions of the Hoffman reference is playback scheduling parameter received for scheduling a broadcast event where the playback scheduling parameter associated with scheduling the broadcast event and prioritized by topic with respect to other broadcast events. Culbertson does not make up for the deficiencies of Hoffman, as Culbertson fails to teach or suggest playing back a previously recorded broadcast event.

Additionally, with regard to claims 14, 15, 32 and 33, neither Hoffman nor Culbertson, taken alone or in combination, fairly teaches or suggests where the playback format parameter is associated with formatting the broadcast event playback and prioritized by title with respect to other broadcast events and where the playback format parameter is associated with formatting the broadcast event and prioritized by topic with respect to other broadcast events. The Office Action appears to acknowledge that Hoffman does not specifically disclose receiving a playback format parameter for playing back a broadcast event, but then alleges that Hoffman teaches the claimed feature at column 1, lines 50-61, columns 4-5 and column 7, lines 32-60. Applicant agrees with the admission of the Office Action that Hoffman does not teach these features and that nowhere in the rather lengthy portions of the Hoffman reference is playback format parameter received for playing back a broadcast event where the playback format parameter associated with formatting the broadcast event playback and prioritized by title with respect to other broadcast events wherein the playback format parameter associated with formatting the broadcast event and prioritized by topic with respect to other broadcast events. Culbertson does not make up for the deficiencies of Hoffman, as Culbertson fails to teach or suggest playing back a previously recorded broadcast event.

Thus, in addition to being dependent on independent claims 10 and 28, the specific features of dependent claims 11-17 and 29-35 are also distinguishable over Hoffman and Culbertson by virtue of the specific features recited in these claims. Accordingly, Applicant respectfully requests withdrawal of the rejection of dependent claims 11-17 and 29-35 under 35 U.S.C. § 103 (a).

IV. 35 U.S.C. § 103, Alleged Obviousness, Claims 18, 36, 43 and 44

The Office Action rejects claims 18, 36, 43 and 44 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hoffman et al. (U.S. Patent No. 4,635,121) in view of Culbertson et al. (U.S. Patent No. 5,168,481) and further in view of Williams et al. (U.S. Patent No. 5,977,964). This rejection is respectfully traversed.

Claims 18 and 36 are dependent on independent claims 10 and 28 and, thus, these claims distinguish over Hoffman and Culbertson for at least the reasons noted above with

regards to claims 10 and 28. Moreover, any alleged combination of Hoffman, Culbertson and Williams would not be sufficient to reject independent claims 10 and 28 or claims 18 and 36 by virtue of their dependency. In addition, with regard to independent claims 43 and 44, while Williams may teach user identification, Williams does not provide for the deficiencies of Hoffman and Culbertson. That is, Williams does not teach or suggest retaining the broadcast event according to the retention parameter in order to create a previously recorded broadcast event, retrieving the previously recorded broadcast event according to the playback format parameter, and playing back the previously recorded broadcast event according to the playback format parameter. As discussed above, Hoffman and Culbertson fail to teach or suggest these specific features.

Moreover, the Office Action may not use the claimed invention as an "instruction manual" or "template" to piece together the teachings of the prior art so that the invention is rendered obvious. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Such reliance is an impermissible use of hindsight with the benefit of Applicant's disclosure. *Id.* Therefore, absent some teaching, suggestion, or incentive in the prior art, Hoffman, Culbertson and Williams cannot be properly combined to form the claimed invention. As a result, absent any teaching, suggestion, or incentive from the prior art to make the proposed combination, the presently claimed invention can be reached only through an impermissible use of hindsight with the benefit of Applicant's disclosure as a model for the needed changes.

In view of the above, Hoffman, Culbertson and Williams, taken alone or in combination, fail to teach or suggest the specific features recited in independent claims 43 and 44 or independent claims 10 and 28, from which claims 18 and 36 depend. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 18, 36, 43 and 44 under 35 U.S.C. § 103(a).

V. Conclusion

It is respectfully urged that the subject application is patentable over the prior art of record and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

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